



Flathead County

Planning & Zoning

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MEMO

To: Flathead County Planning Board and Board of Commissioners
From: Alex Hogle, Planner II
Date: February 29, 2012
RE: FSTA-11-01; Text amendments to Flathead County Subdivision Regulations

Dear Planning Board members and Commissioners,

This memo regards a request by Flathead County Planning and Zoning Office for amendments to the text of the Flathead County Subdivision Regulations (FCSR). The Flathead County Planning Board will conduct a public hearing on the proposed text amendment on March 14, 2012 in the 2nd Floor Conference Room of the Earl Bennett Building, located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed amendment at a date and time yet to be determined.

The purpose of the request is to correct inconsistencies, address troublesome procedural issues, and make appropriate revisions pursuant to legislative updates which have been recognized since the revised Subdivision Regulations were adopted in December 2010. To gauge interest and determine suitability for this department to work on specific items as text amendments, a list of 'housekeeping' items was vetted by the Planning Board on 11/09/11, and the Board voted to request the Commission authorize the work. On 11/10/11 the Board of Commissioners approved the work to be processed by this department as a publicly initiated text amendment to the Flathead County Subdivision Regulations. The current request is based upon the positive response resulting from those discussions.

Ten specific amendments are proposed to the text of the regulations and the appendices to address various matters. A draft copy of the revised regulations entitled *FSTA-11-01 Draft Text Amendments to Flathead County Subdivision Regulations* graphically depicts each proposed amendment with proposed additions shaded gray and *italicized* and proposed deletions shaded gray and ~~stricken~~. The draft document is contained in the file, attached on the CD in the Planning Board and Commissioner packets, and has been posted for public review on the Flathead County Planning and Zoning Department webpage since February 24, 2012.

The following is a description of the general character of each proposed amendment, including the page(s) in *FSTA-11-01 Draft Text Amendments to Flathead County Subdivision Regulations* where the proposed amendment is shown, and the purpose for the proposed change.

1. Regarding fees applicable to a 'First Minor Subdivision Amended Preliminary Plat' application, revise Section 4.2.2(b)(ii) FCSR to reduce the required fee from 100% to 50% of the originally submitted fee.
 - Draft amendment shown on p.16 of Draft Regulations
 - Purpose - Provide consistency with the fee policy for 'Major Subdivision Amended Preliminary Plat' applications because the review of each type of amended plat application requires equivalent time and effort.
2. Regarding access for lots created under Section 4.2.3 'First Minor Subdivision Administrative Approval of Preliminary Plat', amend Section 4.7.7(c) FCSR to clarify that those lots may have direct access onto a collector or arterial road.
 - Draft amendment shown on p.34 of Draft Regulations
 - Purpose - Subdivisions reviewed under Section 4.2.3 FCSR are often located adjacent to county collector or arterial roads, and the subject properties often have pre-existing homes and driveways directly accessing a collector or arterial road. Due to the simplicity of design and minimal number of lots typical of subdivisions reviewed under Section 4.2.3 FCSR, requirement for access via internal subdivision roads is impractical and counter to the intent of the provision because of cost and complexity. Provisions of Section 4.2.3 FCSR require compliance with Section 4.7 Subdivision Design Standards and also prohibit subdivisions reviewed under Section 4.2.3 FCSR from requesting a variance to applicable standards. The draft amendment to allow direct driveway access onto a collector or arterial road for subdivision lots reviewed under Section 4.2.3 FCSR is based on the minimal impact these lots are assumed to have on roads and public health and safety.
3. Regarding the submittal and review of an application request for 'First Minor Subdivision Administrative Approval of Preliminary Plat', 1) clarify a First Minor Subdivision Impact Criteria Report as outlined in Appendix D FCSR is required to be submitted with the application, and 2) the report must find no significant impact to any of the criteria by amending Sections 4.2.3 and 4.2.3(a)(10) FCSR.
 - Draft amendment for item 1) shown in Section 4.2.3(a) FCSR on p.17 of Draft Regulations. Draft amendment for item 2) shown in Sections 4.2.3, 4.2.3(a), and 4.2.3(a)(8) FCSR on pgs. 17 and 18 of Draft Regulations
 - Purpose - 1) 76-3-609(2)(f) MCA provides for an expedited review of a first minor subdivision subject to review for impacts to the primary criteria outlined in 76-3-608(3). While existing language doesn't clearly inform an applicant as to what needs to be submitted with the request, the First Minor Subdivision Impact Criteria Report as outlined in Appendix D FCSR addresses the primary criteria required to be reviewed and provides an effective template/framework for applicants to use.
 - Purpose - 2) Minimal time required for preliminary plat approval is the main benefit of the expedited review of a first minor subdivision preliminary plat. In

order to maintain the expedited intent of the provision it is imperative the preliminary plat be approved without mitigating conditions necessitating Findings of Fact, as that would necessitate the plat being reviewed by the Board of Commissioners in order for them to adopt the Findings of Fact as a basis for the mitigating conditions, thereby negating the benefit of the expedited review and administrative approval by the Planning Director. The ability for the preliminary plat to be simply approved without conditions is practical and reasonable if the ten criteria outlined in Section 4.2.3(a) FCSR are met because the preliminary plat would comply with applicable provisions of the subdivision regulations and no mitigation of impacts to the various primary criteria would be necessary.

4. Regarding the review and approval of 'First Minor Subdivision Administrative Approval of Preliminary Plat', amend Sections 4.2.3(b) & (c) FCSR to clarify a more practical and legally defensible procedure for adoption of findings of fact as they relate to the conditions of preliminary plat approval.

- Draft amendment shown on p.18 and p.14 of Draft Regulations
- Purpose - The existing language of Section 4.2.3 FCSR states the preliminary plat would be administratively approved with conditions based upon Findings of Fact to be prepared during the preliminary plat review but not adopted until final plat.

76-3-608(4) MCA states any preliminary plat conditions of approval intended to reasonably minimize potentially significant adverse impacts identified through the review shall be justified by written Findings of Fact issued by the governing body. The existing language of Section 4.2.3 FCSR is problematic because conditions required to be met by the applicant/developer at the time of final plat would not be based on adopted Findings of Fact. In the event the Board of Commissioners disagree with the 'prepared findings' and conditions at the time of final plat, the applicant/developer would potentially face loss of time and money which may lead to legal conflicts.

Essentially, the proposed amendment clarifies 1) administrative approval may be granted when no impacts requiring mitigating conditions of approval (and therefore Findings of Fact) are present and the preliminary plat is in compliance with the Flathead County Subdivision Regulations, and 2) Findings of Fact regarding the basis of the preliminary plat administrative approval and compliance of the final plat with the Flathead County Subdivision Regulations will be adopted by the Board of Commissioners as a component of the final plat review and approval process.

5. Regarding extensions to preliminary plat approval period, amend Section 4.1.11(a) FCSR to clarify capability for extensions as established under statute.

- Draft amendment shown on p.12 of Draft Regulations
- Purpose - Ensure consistency between the subdivision regulations and the recently revised 76-3-610 MCA which allows the governing body, at the request of the subdivider, to extend its approval for a mutually agreed-upon period of time, and which allows more than one extension to a preliminary plat approval.

6. Regarding extensions to preliminary plat approval as related to preliminary plat phasing plans, amend Section 4.4.2(d) FCSR to clarify capability for extensions to preliminary plat subdivision phases.
 - Draft amendment shown on p.21 of Draft Regulations
 - Purpose - Ensure compatibility of phased subdivision preliminary plat approval periods with legislative revisions to 76-3-610 MCA concerning extensions to subdivision preliminary plat approvals. Essentially, the proposed amendment clarifies approval period for a subdivision phase may be extended in the same manner as a preliminary plat approval.
7. Regarding requirements for 'Walkways and Pedestrian/Bicycle Paths and Easements', amend Section 4.7.19 FCSR to 1) clarify differing applicable requirements for walkways (aka sidewalks) and pedestrian/bicycle paths and 2) specify that requirements for pedestrian/bicycle path easements are applicable only if a subdivision abuts a proposed route included in the Flathead County Trails Plan.
 - Draft amendment shown on p.48-49 of Draft Regulations
 - Purpose - Existing language in Section 4.7.19 FCSR requires a 10 foot wide easement to be established along the boundary of any new subdivision where it abuts a collector or arterial road, regardless of path type or whether the location is anticipated as a route for a walkways or pedestrian/bicycle path. 1) As sidewalks and pedestrian/bicycle path are constructed to different standards and dimensions the easements necessitate differing width (proposed at 10 feet for sidewalks and 15 feet for pedestrian/bicycle paths. 2) The Flathead County Trails Plan includes a map of potential future routes for pedestrian/bicycle paths which aim to serve the county's populace for various functional purposes. If a subdivision abuts the location of a proposed pedestrian/bicycle path envisioned by the adopted plan, an appropriate easement may be justified to be required as a condition of preliminary plat approval, but if a subdivision does not abut the location of a proposed pedestrian/bicycle path envisioned by the adopted plan, an easement is not justified to be required.
8. Regarding the requirement of topographic data to be shown on a preliminary plat, amend Appendix B, Part 2(e) to indicate the ability for topographic data to be waived is based only on elevation difference over the area of the entire subdivision and whether the subdivision contains areas mapped a 100-year floodplain.
 - Draft amendment shown on p.A7 of Draft Appendices
 - Purpose - The ability for topographic data to be waived currently requires elevation difference over the area of the entire subdivision to be less than 20 feet, the average lot size to be 20 acres or greater, and the subdivision may not be in a 100-year floodplain. Essentially, the proposed amendment indicates the ability for topographic data to be waived is based only on elevation difference over the area of the entire subdivision and whether the subdivision contains areas mapped a

100-year floodplain, and is not based on average lot size within a subdivision, as that is difficult to justify.

9. Regarding applicability of depth to groundwater monitoring requirements, amend Appendix C, Section 1, (b)(i) and Appendix D, (d)(iii) by replacing 'eight' feet with 'four' feet in reference to groundwater monitoring thresholds.
 - Draft amendment on p.A10 and p.A22 of Draft Appendices
 - Purpose - The amendment is proposed in order to provide consistency with minimum MTDEQ standards and the applicable depth to groundwater provisions currently established elsewhere in the regulations, specifically in Section 4.7.12 FCSR.
10. Regarding a typographic error identified in Appendix C, Section 1, (b)(ii), correct the error by amending the section to include the proper reference (replacing 'subsection (a)(i) above...' with 'subsection (b)(i) above...').
 - Draft amendment on p.A10 of Draft Appendices
 - Purpose - This is proposed to correct a typographic error which results in an improper cross-reference.

FSTA-11-01 Draft Text Amendments to Flathead County Subdivision Regulations was posted on the Planning and Zoning Department website for public review on 2/24/12 and legal notice of the Planning Board public hearing on the proposed text amendment was published in the February 26, 2012 edition of the Daily Interlake. Following the Planning Board hearing on March 14, 2012, legal public notice of the Board of Commissioners public hearing on the proposed subdivision regulation text amendment will be published in the Daily Interlake according to statutory requirements found in Section 76-3-503 MCA and according to Section 4.04 of the Flathead County Subdivision Regulations.

Actions by the Flathead County Planning Board and Board of Commissioners will be documented in subsequent addendums to file # FSTA-11-01.